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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

NO. [redacted] 57

RAILROAD COMMISSION OF TEXAS, ET AL.,
Appellants

v.

HUMBLE OIL & REFINING COMPANY,
Appellee

MOTION TO ADVANCE AND FOR EXTENSION OF STAY PENDING APPEAL

On Appeal from the District Court of the United States for the Western District of Texas

FIRM FOUNDATION - AUSTIN

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RAILROAD COMMISSION OF TEXAS, ET AL.,
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Appellee

MOTION TO ADVANCE AND FOR EXTENSION OF STAY PENDING APPEAL

To the Honorable Supreme Court of the United States:

Now come the appellants, the Railroad Commission of Texas, and Lon A. Smith, Ernest O. Thompson, and G. A. Sadler, Members of the Railroad Commission of Texas, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, and say:

I.

This case involves the constitutionality under the 14th Amendment to the Constitution of the United States of certain proration orders issued by the Railroad Commission of Texas limiting and apportion-

ing the allowable production of oil from the East Texas oil field. The orders attacked by the appellee and enjoined by the three-judge District Court below affect the entire East Texas oil field, which contains approximately 133,000 acres of productive area and over 25,000 producing oil wells. Because of the large production from the East Texas oil field, the final determination of the validity of the proration orders involved in this case is of extreme importance, not only to the persons directly affected in the East Texas oil field, but also to the State of Texas and to the oil industry generally. An early hearing of this case will avoid much uncertainty and confusion which will exist until it is finally determined by the decision of this court whether or not such proration orders are valid. This appeal involves similar issues to case No. 681, *Railroad Commission of Texas, et al.* v. *Rowan & Nichols Oil Company*, now pending in this Court.

II.

The enforcement and execution of the final injunction issued by the three-judge District Court should be stayed pending the hearing and final determination of this case by this Honorable Court. On February 21, 1940, the said three-judge District Court announced that it would enter its judgment in favor of the appellee, enjoining the enforcement of the proration orders attacked, and gave the appellants ten days in which to decide whether or not this action would be appealed. On March 1, 1940, the appel-

lants notified the said three-judge District Court that they would appeal this case, and at the same time filed their motion for a stay of judgment pending the appeal. A copy of this motion is attached hereto, marked "Exhibit A," (page 8, *infra*) and it is prayed that such motion be considered a part hereof. On March 14, 1940, a hearing was held before Circuit Judge Samuel H. Sibley and District Judge Robert J. McMillan, on said motion for a stay, and it was then decided by said judges, that, because of the public importance of the questions involved and the serious effect of enforcing the injunction prior to a final determination of this case by this Honorable Court, a stay of the injunction pending the appeal should be granted. It was then decided that the stay should be granted for a period of sixty days, within which time it was anticipated that this Honorable Court could hear and determine this case, it then being conceded that if this case could not be determined within such time, this Honorable Court would have power to extend the stay until the appeal was finally determined. Thereafter, on March 19, 1940, the final judgment in this case was entered by the three-judge District Court, granting to the appellee a permanent injunction but staying the enforcement and execution of the injunction for a period of sixty days from the date of the judgment. A copy of the judgment is attached hereto and is marked "Exhibit B" (*infra*, page 17)

III.

The stay which was granted by the three-judge

District Court should be extended by this Honorable Court until such time as this case can be heard and decided by this Honorable Court, in order that serious and irreparable injury may not be done to the appellants and to the East Texas oil field and the oil industry of the State of Texas as a whole. It appears to be doubtful whether or not this case can be finally determined by this Honorable Court within sixty days after March 19, 1940, the date of the final judgment of the District Court. The effect of the enforcement and execution of the injunction granted by the three-judge District Court, restraining the enforcement of the proration orders of the Railroad Commission of Texas, would be to destroy the *status quo* by permitting the appellant, Humble Oil & Refining Company, to produce oil from its 2,547 wells without the regulations and restrictions imposed upon other operators. Such other operators in the East Texas field will be placed in the position of either having to permit their properties to be drained, or of disregarding the orders of the Railroad Commission or seeking to have them set aside by Court injunction. Much litigation and great confusion and inequality can be prevented if the stay granted by the District Court is extended until this Honorable Court finally passes upon the validity of the proration orders.

IV.

The appellee will not suffer any irreparable injury from a continuation of the present method of proration pending this appeal. On November 10, 1939, a

hree-judge District Court, composed of Circuit Judge Foster and District Judges Kennerly and Atvell refused an interlocutory injunction to the plaintiff on the ground that it was not shown that irreparable injury would be done to the plaintiff pending a hearing on the merits. In its judgment entered on March 19, 1940, the three-judge District Court which entered the final judgment below granted a stay of the injunction for a period of sixty days. The rate of withdrawal from the East Texas field under the present method of proration is comparatively low and the appellee is producing under the present order of the Railroad Commission a larger percentage of the field allowable that it produced for over six years prior to the filing of this action. Any damage or injury which may result to the appellee as a result of the stay of the judgment will be greatly outweighed by the injury which will be done to the appellants and to the operators in the East Texas field and to the oil industry in the State of Texas as a whole by reason of the confusion, uncertainty and inequality which would result if the stay is not extended. Appellants have prosecuted this appeal with diligence and will continue to use diligence to obtain an early hearing and decision on this case. The extension of the stay granted by the three-judge District Court is asked not for delay but in order that justice may be done.

WHEREFORE, appellants respectfully pray:

(1) That this case be advanced for argument and hearing.

(2) That the enforcement and execution of the permanent injunction issued by the three-judge District Court below be stayed until the final determination of this case by this Honorable Court.

(3) For such other and further relief as shall be just and proper in the premises.

Respectfully submitted,
GERALD C. MANN
Attorney General of Texas

W. F. MOORE
First Assistant Attorney General

JAMES P. HART
Assistant Attorney General

THE STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared F. V. L. Patten, who, being duly sworn, upon his oath deposes and says:

My name is F. V. L. Patten. I am Director of Production of the Oil & Gas Division of the Railroad Commission of Texas. I have read the foregoing motion to advance and for an extension of stay pend-

ing appeal, and I am cognizant of the facts therein stated. The facts alleged in said motion are true and correct.

F. V. L. PATTEN

Subscribed and sworn to before me, the undersigned authority, this ..... day of April, 1940.

Notary Public, Travis County, Texas

"EXHIBIT A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

HUMBLE OIL & REFINING COMPANY,
Plaintiff

v.

RAILROAD COMMISSION OF TEXAS, ET AL., Defendants

CIVIL ACTION NO. 31

MOTION FOR STAY OF JUDGMENT

To said Honorable Court:

Come now the defendants, the Railroad Commission of Texas and Lon A. Smith, Ernest O. Thompson and Jerry Sadler, the Members of the Railroad Commission of Texas, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, and respectfully move the court to grant a stay of its judgment, and as grounds for this motion, defendants say:

I.

This court on February 21, 1940, announced its decision to enter a judgment granting to the plaintiff, Humble Oil & Refining Company, a final injunction restraining the defendants from enforcing or attempting to enforce the proration orders of the Railroad Commission of Texas attacked in this action by the plaintiff, or any similar orders substantially the same as the orders attacked by the plaintiff in its supplemental complaint. Defendants desire to prosecute an appeal from such judgment to the Supreme Court of the United States. Defendants say that in equity and good conscience the injunction of the court should be stayed pending a reasonable time within which the defendants may perfect their appeal to the Supreme Court of the United States, and pending the final determination of such appeal, for the following reasons:

(1) A stay of the judgment of the court should be granted in order that defendants' right of appeal may not be rendered practically ineffective and in order that serious and irreparable injury may not be done to the defendants and to the East Texas oil field and the oil industry of the State of Texas as a whole.

(2) The effect of the judgment of the court, granting an injunction against the enforcement of the proration orders of the Railroad Commission of Texas for the East Texas field, will be to destroy and not to preserve the status quo. Even if the court restricts the production of the Humble Oil & Refin-

ing Company to a production from its leases of about twenty-five or thirty per cent more than it is permitted to produce under the present orders of the Railroad Commission, the result will be to add approximately 25,000 barrels to the daily production from the East Texas field, and there will be an inequality of production between the Humble Oil & Refining Company and leases located adjacent to the properties of Humble Oil Refining Company and with other properties similarly situated. By granting a stay of said judgment and by suspending the operation and execution of the injunction, pending an appeal, this court will preserve the status quo until the validity of the proration orders of the Railroad Commission can be finally determined by the Supreme Court of the United States.

(3) Said judgment should be stayed because a state of great inequity, uncertainty and confusion in the East Texas oil field will be prevented by staying said judgment. While the court does not hold the proration order invalid except as to the plaintiff in this case, it is evident that if the court's judgment is finally affirmed, there must be a complete revision of the proration orders of the Railroad Commission applicable to the East Texas oil field. The property rights of the owners and operators in the East Texas field will be uncertain until a final determination of this cause by the Supreme Court of the United States can be obtained. Unless a stay is granted, a situation of inequality between the Humble Oil & Refining Company and other operators, whose properties are adjacent to the properties of Humble Oil &

Refining Company, or whose properties are similarly situated, will be created, by reason of the fact that the Humble Oil & Refining Company will be allowed to produce a larger proportionate share of the allowable production from the field than others similarly situated. Such operators will be faced with the alternative of complying with the orders of the Railroad Commission and receiving a smaller proportionate share of the total field allowable than the Humble Oil & Refining Company and having their properties drained by plaintiff, or of filing suit against the Railroad Commission to enjoin the enforcement of the proration orders of the Railroad Commission and having the District Court fix the amount of oil which such operators can produce. Since the court is obviously without power to promulgate a general proration order applicable to the East Texas field, and since each of such suits must be determined upon the particular facts in such suit, it will inevitably result that there will be much confusion and great inequality among the various operators in the East Texas field. Such inequality, confusion and uncertainty can be prevented if a stay is granted so that all operators will continue to receive the amounts allowed by the present proration order until the validity of such order can be finally determined by the Supreme Court by the United States. After the appeal is finally determined by the Supreme Court of the United States, the Railroad Commission will then be able to formulate and promulgate an order which will comply with the law as finally settled by that court and which will be equally applicable to all operators within the field.

(4) The plaintiff will not suffer any irreparable injury from a continuation of the present method of proration pending this appeal. On November 10, 1939, a three-judge court, composed of Judge Foster, Judge Kennerley, and Judge Atwell, refused a temporary injunction to the plaintiff on the ground that it was not shown that irreparable injury would be done to the plaintiff pending a hearing on the merits. An appeal to the Supreme Court of the United States would be prosecuted promptly and with expedition by the defendants, and the defendants would make motion to advance such appeal, and a final determination of this case by the Supreme Court of the United States could probably be obtained within a period of three or four months. The evidence in this case shows that according to the estimates of its own engineers, the depletion of the Humble Oil & Refining Company's leases amounts to approximately the same amount as has been produced from its leases, and in a large percentage of its leases, it still has in place exactly as much oil as was originally in place beneath such leases. The rate of withdrawal from the East Texas field under the present method of proration is comparatively slow, and the plaintiff will suffer very little drainage, if any, from any of the surrounding tracts during the time which will elapse before a final determination before the Supreme Court of the United States can be obtained.

(5) Any damage or injury which may result to the plaintiff as a result of the stay of the judgment entered by the court in this case will be greatly outweighed by the injury which will be done to

the defendants and to operators in the East Texas field, and to the oil industry in the State of Texas as a whole, by reason of the confusion, uncertainty and inequality which will be caused if plaintiff is allowed to produce a greater proportion of oil, during the pendency of this appeal, than the remaining operators in the East Texas field. If a stay of the court's judgment is granted, it will be unnecessary for other operators in the East Texas oil field to file suits in order to protect their leases from drainage. If a stay is refused however a great number of lawsuits will inevitably be filed by persons similarly situated to the Humble Oil & Refining Company. Such lawsuits will necessarily be very complicated and very expensive to the Railroad Commission of Texas and will require a large expenditure of public funds in the defense of such cases. Such multiplicity of suits can be prevented by staying the judgment of this court pending appeal. More important however than such expense and the direct effect upon the defendants, is the effect of such refusal to grant a stay upon the other operators in the East Texas field and the oil industry in the State of Texas and throughout the nation. The effect of prorating the field by court injunction will be not only to create a state of confusion and inequality, but also to greatly increase the total production from the East Texas field, to the point where there will probably be a large amount of physical waste of oil and gas. In effect, all efforts to regulate and prorate production of oil from the East Texas field will be suspended pending the appeal, unless a stay of the court's judgment is granted.

The Railroad Commission has received information which causes it to believe that if this stay is not granted there will be immediately a number of suits filed which will involve a large percentage of the producing acreage in the East Texas oil field.

(6) Unless a stay is granted, there will be no method whereby the parties can be restored to their present position in the event the judgment of the trial court is reversed by the Supreme Court of the United States. If the Humble Oil & Refining Company is permitted to produce oil in excess of its present allowables pending an appeal, in the event the judgment of this court is reversed there will be no method of restoring to the adjoining land owners the oil which the Humble Oil & Refining Company will drain from underneath their tract by reason of their increased allowable. Nor will there be any method whereby the Railroad Commission can require the Humble Oil & Refining Company to reduce its future allowable so as to account for the excess oil which it will have produced pending appeal, and the judgment of the Supreme Court of the United States will to such extent be rendered ineffective.

II.

Defendants say that they have no personal interest in the case, but that they are prosecuting the same in order to have a final determination of the validity of the method of proration involved in the orders of the Railroad Commission of Texas under attack in

this State. Defendants have no method under the laws of the State of Texas whereby they can make a supersedeas bond, in their official capacity as Members of the Railroad Commission of Texas, or as Attorney General of Texas. Defendants say it would be impossible for them individually to make a bond and that it would be unjust to require them to submit to personal liability as a condition of obtaining a stay of the judgment, where, in effect, the appeal can be effective only if the stay is granted.

WHEREFORE, defendants pray that this court stay the operation and execution of the permanent injunction against the enforcement of the proration orders of the Railroad Commission of Texas as applicable to the East Texas oil field, during a reasonable time in which defendants may perfect their appeal to the Supreme Court of the United States, and pending a final determination of such appeal by said court, that no bond be required of defendants as a condition for such stay, and for such other relief as may be proper in the premises.

Respectfully submitted,

GERALD C. MANN
Attorney General of Texas

JAMES P. HART
Assistant Attorney General

E. R. SIMMONS
Assistant Attorney General

EDGAR CALE
Assistant Attorney General

TOM D. ROWELL, JR.
Assistant Attorney General

Attorneys for Defendants
Austin, Texas

THE STATE OF TEXAS
COUNTY OF TRAVIS

Before me, the undersigned authority, on this day personally appeared F. V. L. Patten, who being duly sworn upon his oath deposes and says that he is an employee of the Railroad Commission of Texas, being Director of Production in the Oil and Gas Division, that he is duly authorized to make this affidavit, that he is familiar with the facts stated in the foregoing motion, and that the facts therein stated are true.

F. V. L. PATTEN

Subscribed and sworn to before me this 1st day of March, A. D. 1940.

(SEAL) ADA MAY MADDOX
Notary Public, Travis County, Texas

"EXHIBIT B"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

HUMBLE OIL & REFINING COMPANY,
Plaintiff

v.

RAILROAD COMMISSION OF TEXAS ET AL.,
Defendants

CIVIL ACTION NO. 31

FINAL JUDGMENT

This action having been heard twice heretofore before statutory three-judge courts duly assembled on motions for preliminary injunctions, came on to be tried on its merits on February 13 to 16, 1940, before a statutory court of three judges, consisting of Sibley, Circuit Judge, and McMillan and Allred, District Judges, and came the plaintiff, Humble Oil & Refining Company, by its attorneys of record and announced ready for trial, and came the defendants, the Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson and G. A. Sadler, members of said Commission, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, by their attorneys of record and announced ready for trial, and it appearing that proper notice of this motion has been given to the Governor and Attorney General of Texas as required by law,

and that the Court has jurisdiction of the parties and subject-matter involved in this action, and the Court, having heard the pleadings of the parties, the evidence and argument of counsel, and being fully advised, is of the opinion that the law and the facts are with the plaintiff, and that the orders and schedules of the Railroad Commission of Texas for the East Texas field complained of in this action are unreasonable and void as to plaintiff, and deprive plaintiff of its property contrary to the statutes of the State of Texas and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and inflict upon plaintiff daily and currently irreparable injury for which plaintiff has no adequate remedy at law; and the Court being of the further opinion that plaintiff will hereafter daily and currently suffer irreparable injury for which it has no adequate remedy at law, all contrary to the statutes of Texas and the Fourteenth Amendment as aforesaid, if orders which are the same or substantially the same as the orders complained of are enforced against plaintiff's properties and wells in the East Texas field; and the Court having afforded to the defendant, Railroad Commission of Texas, a period of ten days in which to decide whether it would write a new and valid order and schedules for said field or would appeal this action, and having been advised by said Commission that it would appeal and that it will not write an order and schedules for said field differing in any material respects from the orders and schedules complained of; and the Court being of the opinion that a permanent injunction should

issue against the defendants as set out below;

It is, therefore, ORDERED, ADJUDGED AND DECREED that the Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson, and G. A. Sadler, members of said Commission, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, their successors, representatives, agents, servants, attorneys, and employes be, and they are each and all hereby permanently enjoined from enforcing or attempting to enforce against plaintiff the proration orders promulgated by the Railroad Commission of Texas on September 11 and September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith, for the East Texas field, as well as any and all other proration orders, rules, regulations and schedules which have been or may be promulgated by the Railroad Commission of Texas for the East Texas field which are the same or substantially the same, or similar to, or have substantially the same effect as, said orders and schedules, or which attempt to prorate the production among properties in the East Texas field on a basis which is the same or substantially the same as the basis applied in said orders and schedules.

It is further ORDERED, ADJUDGED AND DECREED that the defendants and each of them, their successors, representatives, agents, servants, attorneys and employees, are hereby permanently enjoined from denying to plaintiff tenders to move, or from interfering in any way with the transporta-

tion and marketing of, the oil produced or to be produced in accordance with this judgment, and from suing for or from attempting otherwise to claim or collect penalties or to enforce forfeitures or in any other manner to penalize the oil or plaintiff, on account of the oil produced or to be produced in accordance with this judgment.

It is further ORDERED, ADJUDGED AND DECREED that the defendants and each of them, their successors, representatives, agents, servants, attorneys and employees, are hereby permanently enjoined from suing for or from attempting otherwise to claim or collect penalties from plaintiff or to seek to enforce forfeitures against plaintiff or from attempting in any other manner to penalize plaintiff on account of oil which plaintiff may have produced under the provisions of the prelimfnary injunction heretofore granted on August 11, 1939 in this action.

It is further ORDERED, ADJUDGED AND DECREED that all costs in this action are taxed against the defendants, except the costs incurred in connection with plaintiff's second motion for a preliminary injunction, which latter costs are taxed against plaintiff.

The defendants having announced that they would appeal from the judgment in this action, and the court being of the opinion that the injunction should be stayed for a reasonable length of time within which the appeal can be perfected and prosecuted, it is further ORDERED, ADJUDGED AND DE-

CREED that the enforcement of the injunction herein granted is stayed for a period of sixty (60) days from the date hereof.

The Clerk is directed to enter this judgment.

To all of the foregoing judgment, except that portion staying the injunction as above provided, the defendants in open court duly excepted.

DONE at Houston, Texas, this the 19th day of March, A. D. 1940.

SAM'L H. SIBLEY
Circuit Judge

ROBERT J. MCMILLAN
District Judge

JAMES V. ALLRED
District Judge

Approved as to form:
REX G. BAKER

ACKNOWLEDGEMENT OF SERVICE OF MOTION

Service of the foregoing motion is acknowledged by the undersigned attorney for the appellee, Humble Oil & Refining Company, this .... day of April, 1940.

Attorney for Appellee,
Humble Oil & Refining Company,
....., Texas

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